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5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF ARIZONA**
7

8 United States of America,

9 Plaintiff,

10 v.

11 Donald Cruz Vavages,

12 Defendant.
13

No. CR-11-03469-001-TUC-CKJ (LCK)

ORDER

14
15 Before the Court is Defendant Donald Cruz Vavages' Motion to Quash/Lift
16 Detainer on Promise to Appear or in the alternative Sentence in Absentia to Concurrent
17 Term. (Doc. 57) The Government filed a response. (Doc. 58)

18 Defendant requests that the Court (should it find he violated the terms of his
19 supervised release) order his federal sentence to run concurrently with his State sentence.
20 (Doc. 57, ¶ 3 at 2) However, courts generally invoke the ripeness doctrine and refuse to
21 decide matters which would involve "entangling themselves in abstract disagreements[.]"
22 *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 148, (1967); *see also Jacobus v. Alaska*, 338 F.3d
23 1095, 1104 (9th Cir. 2003) (requirement of ripeness ensures that issues are definite and
24 concrete, not hypothetical or abstract). The issue raised in the pending motion does not
25 establish that there is a disagreement between the Parties that requires resolution by the
26 Court.

27 Additionally, to the extent Defendant is requesting to have his federal detainer
28 resolved prematurely, Defendant fails to assert he has been arrested for a violation of
supervised release. Rather, Defendant asserts he is currently incarcerated in State prison

1 on a five-year term. (Doc. 57, ¶ 2 at 1) Violations of supervised release are not controlled
2 by the Speedy Trial Act, 18 U.S. C. § 3661, as they fall under the Due Process Clause of
3 the Fifth Amendment. *United States v. Santana*, 526 F.3d 1257, 1259 (9th Cir. 2008).
4 Violations are also governed by Federal Rule of Criminal Procedure 32.1 and the clock,
5 for sentencing purposes, does not start running until a person “is held in custody for
6 violating . . . supervised release[.]” Fed. R. Crim. P. 32.1(a)(1).

7 It appears Defendant is in custody solely by virtue of the sentence he received for a
8 new offense in the State of Arizona. Federal Sentencing Guidelines have a policy that the
9 sentence imposed for a violation of supervised release is to run consecutively to any
10 sentence imposed for a crime that is the basis for the revocation. U.S.S.G. Ch. 7, Pt. B,
11 Introductory Commentary; *United States v. Contreras*, 63 F.3d 852, 855 (9th Cir. 1995);
12 *see also United States v. Garrett*, 253 F.3d 443, 450 (9th Cir. 2001) (federal government
13 is not required “to writ a defendant out of state custody and bring him before the federal
14 district court for his revocation hearing . . . [which] could prove extremely burdensome”).
15 Moreover, Defendant has failed to allege actual prejudice by virtue of the detainer for his
16 supervised release from the Court. Accordingly, there is no actual prejudice if Defendant
17 finishes his present sentence prior to the initiation of any revocation proceedings. *See*
18 *Contreras*, 63 F.3d at 856 (“The district court did not abuse its discretion in finding that
19 [the defendant] failed to show actual prejudice.”).

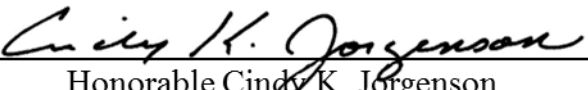
1 Accordingly, IT IS ORDERED:

2 1. The Motion to Quash Detainer (Doc. 57) is DENIED.

3 2. The Clerk of Court shall mail a copy of this Order to:

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5 Donald Cruz Vavages, ADC # 333443
6 APC Red Rock Correctional Center
7 1750 East Arica Road
8 Eloy, AZ 85131

9 Dated this 24th day of July, 2020.

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11 
12 Honorable Cindy K. Jorgenson
13 United States District Judge
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